

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION**

TIM HUCKABEE DDS, PA, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

THE MESSAGE CENTER, INC., a North
Carolina corporation,

Defendants.

Case No. 5:16-cv-00220-FL

NOTICE OF VOLUNTARY DISMISSAL

PLEASE TAKE NOTICE that Plaintiff dismisses this lawsuit against The Message Center, Inc. (“Defendant”) without prejudice.

Federal Rule of Civil Procedure 41(a)(1) provides, in relevant part:

(a) Voluntary Dismissal.

(1) By the Plaintiff.

(A) *Without a Court Order.* Subject to Rules 23(e), 23.1(c), 23.2 and 66 and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing:

(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(ii) a stipulation of dismissal signed by all parties who have appeared.

(B) *Effect.* Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-

court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

In this case, Defendant has neither answered Plaintiff's Complaint nor served a motion for summary judgment. In addition, no class has been certified in this matter so Rule 23's exceptions do not apply. Likewise, this case does not involve any Receiver so as to implicate Rule 66.

Accordingly, Plaintiff hereby dismisses these proceedings in accordance with Rule 41(a)(1)(i) without prejudice.

Dated: February 23, 2017

Respectfully submitted,

/s/ Ted Lewis Johnson
One of Plaintiff's Attorneys

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* Pro hac vice

CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2017, I served the above and foregoing papers by causing a true and accurate copy of such papers to be filed using the Court's electronic filing system, which will send a copy to all counsel of record, and I hereby certify that I have mailed the same documents to the following non CM/ECF participants:

The Message Center, Inc.
c/o Douglas Vought, Registered Agent
527 Keisler Drive, Suite 101
Cary, North Carolina 27518

/s/ Ted Lewis Johnson